



JTPA

Number: D96-14

Serving the People of California

DIRECTIVE

Date: December 2, 1996

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TO: **I** SERVICE DELIVERY AREA ADMINISTRATORS
PRIVATE INDUSTRY COUNCIL CHAIRPERSONS
JTPD PROGRAM OPERATORS
EDD JOB SERVICE OFFICE MANAGERS
JTPD STAFF

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SUBJECT: CALIFORNIA NONDISCRIMINATION AND EQUAL OPPORTUNITY
JTPA PROGRAMS

EXECUTIVE SUMMARY: **A**

Purpose:

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The purpose of this Directive is to: 1) establish the State's policy on nondiscrimination and equal opportunity for Job Training Partnership Act (JTPA) programs in California; 2) provide guidance that will assist the Service Delivery Areas (SDA) in developing Equal Opportunity programs; and 3) provide guidance to SDAs on the resolution of discrimination complaints.

Scope:

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This Directive requires that JTPA recipients, SDA grant recipients, Title III substate grantees and other subrecipients shall comply with the nondiscrimination provisions of Section 167 of JTPA.

Effective Date:

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This Directive is effective immediately.

REFERENCES: **V**

- Title 20 Code of Federal Regulations (CFR) Sections 627.210 and 627.475(b)
 - Title 29 CFR, Part 31, 32, and 34
 - Title 58 Federal Register (FR) 4742
 - Title VI and VII of the Civil Rights Act of 1964
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- Title IX of the Education Amendments of 1972
- Section 503 of the Rehabilitation Act of 1973
- Section 504 of the Rehabilitation Act of 1973, as amended in 1992
- Age Discrimination Act of 1975, as amended
- Americans with Disabilities Act of 1990
- Section 164(g) and 167 of JTPA, as amended in 1992
- JTPA Directive D95-25, Subject: Standards for PIC Oversight and Instructions for Substate Monitors
- JTPA Directive D95-33, Subject: Protocols and Guidelines for State Monitoring Reviews

STATE-IMPOSED REQUIREMENTS:

This Directive contains State-imposed requirements that are shown in ***bold, italic*** type.

FILING INSTRUCTIONS:

This Directive supersedes Policy/Procedure Bulletin 84-9 and 87-8 (Rev. 1).

BACKGROUND:

The Job Training Reform Amendments of 1992 amended Section 167 of JTPA to require that the Secretary of Labor issue final regulations that would clarify the application of the nondiscrimination and equal opportunity provisions of JTPA and provide uniform procedures for implementing these provisions. On January 15, 1993, the Directorate of Civil Rights, the Department of Labor (DOL), the agency responsible for enforcing the various federal nondiscrimination and equal opportunity statutes applicable to federally-assisted programs, established regulations to implement the nondiscrimination and equal opportunity requirements of JTPA (Title 29 CFR, Part 34; Title 58 FR 4742). In order to eliminate the burden of complying with overlapping regulatory requirements, Title 29 CFR, Part 34 provides that compliance by JTPA recipients with Part 34 establishes compliance with the Department's Civil Rights Act of 1964, Title VI regulations (Title 29 CFR, Part 31) and with Section 504 of the Rehabilitation Act of 1973. The Americans with Disabilities Act (ADA) of 1990 also provides equal opportunity for people with disabilities.

POLICY AND PROCEDURES:

Definition(s)

The following definitions are found in Title 29 CFR, Part 34:

Beneficiary - person or persons intended by Congress to receive benefits or services from a recipient of federal financial assistance under JTPA.

<i>Complaint</i>	- involves a charge of discrimination.
<i>Complainant</i>	- party who makes the complaint.
<i>Director</i>	- means Director, Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, DOL, or designee authorized to act for the Director.
<i>Directorate</i>	- means the Directorate of Civil Rights, Office of the Assistant Secretary for Administration and Management, DOL.
<i>Disability</i>	- with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual.
<i>Grievance</i>	- involves a specific article of the collective bargaining agreement (contract).
<i>Recipient</i>	- entity to which federal financial assistance under any title of JTPA is extended, either directly or through the governor or through another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the JTPA-funded program or activity and the governor.
<i>Service Provider</i>	- the operator of any JTPA-funded program or activity that receives funds from or through an SDA grant recipient or a substate grantee.

General

The State of California and its SDAs, in carrying out the purpose of the JTPA, shall establish programs to prepare youth and unskilled adults for entry into the labor force and to afford job training to those economically disadvantaged individuals and other individuals facing serious barriers to employment, such as, dislocated workers. As specified in section 167 of the JTPA, all programs and activities funded in whole or otherwise financially assisted in part under this act must be conducted in compliance with the provisions of federal nondiscrimination laws. Every effort shall be made to provide training and other needed services for eligible individuals to obtain productive employment.

In furtherance of the State's commitment to equal opportunity and nondiscrimination, no person, on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in JTPA, shall be excluded from participation in, denied the benefits of, or subjected to discrimination under a JTPA-funded program or activity.

Participation in programs and activities financially assisted in whole or in part under JTPA shall be open to citizens and nationals of the United States, lawfully admitted permanent resident aliens, lawfully admitted refugees and parolees, and other individuals authorized by the Attorney General to work in the United States.

Title 29 CFR, Part 34.33, requires that each State establish and adhere to a Methods of Administration (MOA) for its JTPA program. The following information is based on the nine elements outlined in California's MOA and the JTPA Nondiscrimination and Equal Opportunity Self-Evaluation Guide that is sent to SDAs by the Employment Development Department (EDD). These elements establish guidelines that help ensure the SDA is complying with applicable nondiscrimination and equal opportunity provisions:

1. Designation of Equal Opportunity (EO) Officer

Each recipient, other than a small recipient or service provider, must designate an Equal Opportunity (EO) Officer who is responsible for coordinating its obligations under these regulations. The SDAs will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of the JTPA and Title 29 CFR Section 34.22.

A small recipient means a recipient who serves fewer than 15 beneficiaries and employs fewer than 15 employees at all times during a grant year. A service provider means the operator of any JTPA-funded program or activity that receives funds from or through an SDA grant recipient. A small recipient will designate an individual responsible for the adoption and publication of complaint procedures and the processing of complaints pursuant to Title 29 CFR Section 34.42. Service providers are not required to designate an EO Officer. The responsibility for ensuring service provider compliance with the nondiscrimination and equal opportunity provisions will rest with the SDA.

The SDA EO Officer's responsibilities include:

- hear, answer, and advise individuals on complaints of discrimination;
- explain to fellow employees or participants how the EO complaint system works;
- consult with the Job Training Partnership Division (JTPD) Program Manager as necessary; and
- inform employees and participants of their rights and responsibilities.

The SDA EO Officers' names must be publicized at the local level through a variety of means including posters, handouts and listings in local directories.

The SDA EO Officer and staff must be trained periodically to provide current understanding of all regulations. The Capacity Building Unit of JTPD provides training on nondiscrimination and equal opportunity.

2. Communicate Equal Opportunity Policies and Procedures

Initial and continuing notice of nondiscriminatory practices and the right to file a complaint must be posted in prominent locations at the SDA, disseminated in internal memoranda and other written communications, included in handbooks and

manuals; made available to each participant, and included in the participant's file. The notice shall be provided in appropriate formats to individuals with visual impairments. Where notice has been given in an alternate format to a participant with a visual impairment, a record that such notice has been given shall be made a part of the participant's file.

In generally distributed publications, the recipient must indicate that the JTPA-funded program or activity is an equal opportunity employer/program, and that auxiliary aids and services are available upon request to individuals with disabilities. This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media.

Where materials indicate that the SDA may be reached by telephone, the telephone number of any Telecommunications Device for the Deaf (TDD) or relay service used by the SDA must be indicated. If the SDA does not have a TDD, the California Relay Services (CRS) (1-800-735-2922) is an alternative. The CRS is a service that relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD and an operator will then contact the party to be called, using voice or TDD. However, TDDs should be available where services provided by telephone are a major function of the JTPA-funded program or activity.

Information or services, as well as the notice and written materials mentioned in the previous two paragraphs, must be provided in appropriate languages, when a significant number of the population eligible to be served or directly affected by a JTPA-funded program, requires service or information in a language other than English.

Each recipient's EO Officer is responsible for the adoption and publication of procedures pursuant to Title 29 CFR Section 34.42, Adoption of Discrimination Complaint Processing Procedures and for ensuring that such procedures are followed.

As of February 16, 1993, complainants alleging a violation of JTPA Section 167 or Title 29 CFR, Part 34, must be informed that they may file a complaint within 180 days from the alleged violation with the recipient's EO Officer (or the person designated for this purpose), or that they may file their complaint directly with the Directorate of Civil Rights, U.S. Department of Labor, 200 Constitution Avenue N.W., Room N-4123, Washington, DC 20210.

If the complainant elects to file a complaint with the recipient (SDA, Private Industry Council, etc.), they must be informed that they must wait until the recipient issues a decision or until 60 days have passed, whichever is sooner, before filing with the Directorate of Civil Rights. If the recipient has not provided the complainant with a written decision within 60 days of filing the complaint, the complainant must be notified that they need not wait for a decision to be issued, but that they may file their complaint with Directorate of Civil Rights within 30 days. If complainant is dissatisfied with the recipient's resolution of the complaint, they must be informed

that they may file a complaint with Directorate of Civil Rights, and that complaint must be filed within 30 days of the date complainant received notice of the recipient's proposed resolution.

The EDD Equal Employment Opportunity (EEO) Office requires that copies of each complaint and resolution be mailed to:

***Chief
Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

A copy of the above information should also be mailed to the Chief of the Job Training Partnership Division.

3. Equal Opportunity Provisions and Nondiscrimination Assurances in Contracts, Plans and Agreements

A system must be implemented to ensure that all contracts, plans and agreements entered into with respect to the operation of the SDA's JTPA-funded programs or activities contain the nondiscrimination assurances as specified.

The nondiscrimination assurances must state that the SDA will "comply fully with the nondiscrimination and equal opportunity provisions" of JTPA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

This section requires that each application for federal financial assistance under JTPA include certain nondiscrimination assurances in the form and manner provided in Title 29 CFR Section 34.20. "Application for assistance" is defined in Section 34.20 as the process by which required documentation is provided to the Governor, recipient or DOL prior to and as a condition of receiving federal financial assistance under JTPA (including both new and continuing assistance).

4. Equitable Services Among Substantial Segments of the SDA Population

The SDAs can assure equitable services among substantial segments of the SDA population by:

- Implementing an outreach and recruitment plan to solicit participation of all potentially JTPA-eligible applicants in the entire SDA.
- Creating an SDA outreach and recruitment plan that will reach eligible persons that will most benefit from the JTPA services.

- Ensuring that the pool of individuals considered for participation includes members of both sexes, the various race/ethnicity/age groups, and individuals with disabilities.
- Establishing a hiring process that is accessible to qualified applicants with disabilities.
- Ensuring that facilities utilized by the SDAs for JTPA services are designed to provide reasonable access to individuals with disabilities in the following areas: training; job structure; work schedule; work procedure; and work equipment and auxiliary aids accommodations.

5. Program and Site Access to Individuals with Disabilities

The following action will assist the SDAs in ensuring that all programs and activities are accessible to persons with disabilities:

- Ensure that intake, assessment, and referral facilities are accessible.
- Ensure that employment tests or other selection criteria do not screen out individuals with disabilities.
- Provide auxiliary aids and services.
- Ensure that training programs are accessible to the visual, hearing, or speech impaired.
- Provide reasonable accommodation to qualified disabled persons to enable them to perform duties of the job (e.g., special aids, modification of work sites, or restructuring of jobs).
- Provide accessible parking to the building entrance, especially if the disabled individuals must go behind vehicles or cross any barriers (e.g., steps, steep slopes, low spots in ground or pavement, buckled concrete, gravel) in order to reach the entrance.
- Provide means by which disabled individuals can receive information about the availability of facilities that are more accessible to the disabled.
- Ensure that information/public counter areas are accessible when entering the building.
- Provide at least one public telephone.
- Provide accessible meeting rooms.
- Provide restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed.
- Ensure that at least one building doorway in the SDA facilities is accessible.
- If the facility has elevators, ensure that they are accessible from the entrance available to disabled individuals.

- Ensure that the building entrance doors are to be accessible with the use of one hand.
- Provide an elevator control panel and entrance buttons with raised numbers and Braille symbols.
- When the facilities are not physically accessible to individuals, provide alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities.

Title 29 CFR, Section 34.6, communications with individuals with disabilities, states “In those circumstances where a recipient believes that the proposed action would fundamentally alter the JTPA-funded program, activity, or service, or would result in undue financial and administrative burdens, such recipient has the burden of proving that compliance with this section would result in such alteration or burdens.”

6. Data and Information Collection: Confidentiality

In compliance with Section 167 of JTPA, SDAs and service providers must:

- Collect data on race/ethnicity, sex, age, and, where known, disability status, of each applicant, eligible applicant, participant, trainee, applicant for employment and employee.
- Safeguard the confidentiality of the required information and prevent the improper use of such information.
- Notify the Directorate of Civil Rights of any administrative enforcement actions or lawsuits filed against an SDA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship or participation in JTPA. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by the Directorate of Civil Rights.
- Retain records, including records of complaints for a period of not less than three years from the close of the applicable year or resolution of complaint.
- Adopt procedures for responding to complaints of discrimination.

7. Monitoring

In accordance with Title 20 CFR, Section 627.475, Compliance Review Division of EDD's Program Review Branch, is responsible for monitoring recipients of JTPA funds for compliance with JTPA provisions and related regulations.

As part of its overall program for monitoring SDAs compliance with Title 29 CFR, Part 34, and Section 167 of the JTPA, the Compliance Review Division

requires that, each year, approximately one-half of the SDAs complete and submit to the division a Nondiscrimination and Equal Opportunity Self-Evaluation. The Compliance Review Division staff will review submitted self-evaluations and use the results, along with other equal opportunity-related data, in determining which SDAs will be monitored onsite during a given program year. All SDAs are encouraged to conduct self-evaluations annually. Through self-evaluations, SDAs can identify the compliance status of their programs and areas in which they need technical assistance.

The JTPA Directive D95-25 establishes instructions for developing substate monitoring plans. The SDAs are required to identify procedures for monitoring all subrecipients and OJT employers, including a process to ensure that each subrecipient is monitored twice each program year (one of the visits is required to be a fiscal review). ***The SDA must monitor their service providers for nondiscrimination and equal opportunity provisions during one of the monitoring reviews.***

8. Discrimination Complaint Processing

In compliance with nondiscrimination and equal opportunity provisions of JTPA and Title 29 CFR Section 34.43, the Equal Opportunity Officer must:

- Adopt and publish procedures for resolving allegations within the SDA of noncompliance with applicable nondiscrimination/equal opportunity provisions.
- Adopt and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination/equal opportunity provisions.
- Establish a system to record discrimination complaints.

The SDA's complaint processing procedures should specify the following:

- a. Who may file - Any person who believes that they or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of JTPA may file a written complaint by them or by a representative.
- b. Where to file - The complaint may be filed either with the recipient or with the Director.
- c. Time for filing - A complaint filed pursuant to this part must be filed within 180 days of the alleged discrimination. The Director, for good cause shown, may extend the filing time. This time period for filing is for the administrative convenience of the Directorate and does not create defense for the respondent.
- d. Contents of complaints - Complaints should be filed in writing and shall:

- be signed by complainant or their representative;
 - contain complainant's name, address, or other means of contacting them;
 - identify the respondent; and
 - describe the complainant's allegation in sufficient detail to allow the Director or SDA, as applicable, to determine whether: 1) the Directorate or the SDA has jurisdiction over the complaint; 2) the complaint was filed timely; 3) the complaint has apparent merit, i.e., whether the allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of JTPA. (NOTE: The information required by item number 3 may be provided by completing and submitting the Directorate's Complaint Information and Privacy Act Consent Forms.)
- e. Right to representation - Each complainant and respondent has the right to be represented by an attorney or other individual of their own choice.
- f. Election of SDA-level complaint processing - If the complainant files their complaint with the SDA, the SDA shall be allowed 60 days to respond.
- (1) If during the 60-day period the resolution is not acceptable to the complainant, they or their representative may file a complaint with the Director within 30 days after the SDA notifies the complainant of the proposed resolution. The above information must be explained to the complainant at the time the resolution is offered.
 - (2) If the 60 days expire and the complainant does not receive a resolution from the SDA or the SDA does not notify the complainant, they or their representative may, within 30 days of the expiration of the 60-day period, file a complaint with the Director.
 - (3) The Director may extend the 30-day time limit if the complainant is not notified, as provided in Section 34.43, or for other good cause shown.
 - (4) The SDA shall notify the complainant in writing immediately upon determining that it does not have jurisdiction over a complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of JTPA. The notification must also include the basis for such determination, as well as a statement of the complainant's right to file a written complaint with the Director within 30 days of receipt of the notification.
- g. Complaints filed with the Director:
- (1) The Director determines whether the Directorate will accept a complaint filed pursuant to Section 34.43. When the Director accepts a complaint for investigation, they shall:

- notify the SDA and the complainant of the acceptance of the complaint for investigation; and
 - advise SDA and complainant on the issues over which the Directorate has accepted jurisdiction.
- (2) The SDA, the complainant, or the representative may contact the Directorate for information regarding the complaint that was filed.
- (3) When a complaint contains insufficient information, the Director will seek the needed information from the complainant. If the complainant is unavailable after reasonable means have been used to locate them, or the information is not furnished within 15 days of the receipt of such request, the complaint file may be closed without prejudice upon notice sent to the complainant's last known address.
- (4) Section 163(c) of JTPA authorizes that the Director may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. The issuing of a subpoena can be done anywhere in the United States, at any designated time or place.
- (5) If the Directorate finds that they do not have jurisdiction over a complaint, they shall:
- explain to the complainant why the complaint is not covered by the nondiscrimination and equal opportunity provisions of JTPA or Title 29 CFR Section 34.43; and
 - when possible, refer the complainant to the appropriate federal, State or local authority.
- (6) The Director will contact the complainant when a claim is not to be investigated and explain the basis for that determination.
- (7) The Director shall refer the complainant to the provisions of Title 45 CFR 90.43(c)(3) if the complaint is based on age. This would fall under the jurisdiction of the Age Discrimination Act of 1975.
- (8) If the complainant alleges more than one kind of complaint, "joint complaint," i.e. individual employment discrimination, age discrimination, equal pay discrimination, etc., the Director shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation, procedures for joint complaints at Title 29 CFR, Part 1691. The Director will advise the complainant and the SDA of the referral.

(9) At the conclusion of the investigation, the Director shall determine if there is reasonable cause to believe a violation of the nondiscrimination and equal opportunity provisions of JTPA has occurred.

(10) After making such a cause finding, the Director shall issue an Initial Determination. The Initial Determination shall notify the complainant and the SDA, in writing, of:

- the specific findings of the investigation;
- the proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- whether it will be necessary for the SDA to enter into a written agreement;
- the opportunity to participate in voluntary compliance negotiations; and

(11) Where a no cause determination is made, the complainant and the SDA shall be so notified in writing. Such determination represents final agency action of the Department.

9. Corrective Actions/Sanctions for Discrimination

Letter of Findings, Notice to Show Cause, or Initial Determination issued pursuant to Title 29 CFR Sections 34.40, 34.41 or 34.43 respectively, shall include the steps and the specific time period it will take the SDA to achieve voluntary compliance.

Steps shall include, but are not limited to, the following:

- Action to end or compensate for the violation of the nondiscrimination and equal opportunity provisions of JTPA (monetary relief may not be paid from federal funds).
- End and/or redress the violation of the nondiscrimination and equal opportunity provisions of JTPA.
- Other corrective or positive benefit, as the Director deems necessary, i.e., outreach recruitment and training designed to ensure equal opportunity.

If the SDA receives a finding of noncompliance, the following sections of Title 29 CFR may be referred to for detailed information:

- Final Determination, Section 34.46
- Notice of Finding of Noncompliance, Section 34.47
- Notification of Breach of Conciliation Agreement, Section 34.48
- Subpart E-Federal Procedures for Effecting Compliance

- General, Section 34.50
- Hearings, Section 34.51
- Decision and Post-Termination Proceedings, Section 34.52
- Suspension, termination, detail or discontinuing of federal financial assistance under JTPA; alternate funds disbursement procedure, Section 34.53

For assistance on establishing policy governing JTPA-related grievance and hearing procedures for noncriminal complaints at the state level, refer to Policy/Procedure Bulletin 84-8.

ACTION:

Bring this Directive to the attention of all affected staff and service providers.

INQUIRIES:

Please direct questions about this Directive to your Program Manager.

/S/ VICKI J. JOHNSRUD
Acting Chief